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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,256	09/20/2003	Shree K. Kurup	KURUP-3	6918
7590 ROBERT NATHANS 36 STAG DRIVE BILLERICA, MA 01821			EXAMINER LEGESSE, NINI F	
			ART UNIT 3711	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/665,256

Applicant(s)

KURUP, SHREE K.

Examiner

Nini F. Legesse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response to the Non-Final office action of 03/13/06 is acknowledged on 05/06/06.

Specification

The amendment filed 05/06/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material that is not supported by the original disclosure is as follows: claim 21 discloses the term "receptor sheet" and this disclosure is not reviled in the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The expression "receptor sheet" in line 11 of claim 21 is new matter that was not disclosed in the specification. The specification does not disclose a receptor sheet.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wargon (US Patent No. 5,949,514).

Wargon discloses an eye patch (10), outer adhesive surface (18), and an inner adhesive surface portion (26) that is flexible sheet means. The Wargon device could comprise corrective lens (see column 3, lines 27+). Wargon fails to disclose a second adhesive layer in the second section of the patch. However, as shown on Figs. 2 and 3 of the reference, Wargon discloses plurality of pigs as connecting means. It would have been obvious to one of ordinary skill in the art to replace the pigs with adhesive layer since that would reduce the manufacturing cost of the device. Regarding the device in having instruction kit to assist the user, providing instruction along a device is old in any art and it would have been obvious to one of ordinary skill in the art to provide one with the Wagon device in order to inform the user how to use the device. Regarding the intended use set forth in the preambles, the device is capable of being used as an attention-attracting device if so desired. Applicant is not claiming a process. See MPEP 2112. Regarding the device being brightly colored, different people have different color

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preferences and it would have been obvious to one of ordinary skill in the art to provide any color including bright color in order to accommodate the likes of different people.

Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig (US Patent No. 4,122,847).

Craig discloses an eye patch (10), outer adhesive surface (12), and an inner adhesive surface portion (31) that is flexible sheet means. Craig fails to explicitly state if the device has instruction kit and if it has bright color. Regarding the device in having instruction kit to assist the user, providing instruction along a device is old in any art and it would have been obvious to one of ordinary skill in the art to provide one with the Craig device in order to inform the user how to use the device. Regarding the intended use set forth in the preambles, the device is capable of being used as an attention getting device if so desired. Applicant is not claiming a process. See MPEP 2112. Regarding the device being brightly colored, different people have different color preferences and it would have been obvious to one of ordinary skill in the art to provide any color including bright color in order to accommodate the likes of different people.

Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bleau (US Patent No. 6,984,037).

Bleau discloses an eye patch (10), outer adhesive surface (14), and an inner adhesive surface portion (see column 3, lines 30+) that is flexible sheet means. Bleau fails to explicitly state if the device has instruction kit and if it has bright color. Regarding the

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device in having instruction kit to assist the user, providing instruction along a device is old in any art and it would have been obvious to one of ordinary skill in the art to provide one with the Bleau device in order to inform the user how to use the device. Regarding the intended use set forth in the preambles, the device is capable of being used as an attention getting device if so desired. Applicant is not claiming a process. See MPEP 2112. Regarding the device being brightly colored, different people have different color preferences and it would have been obvious to one of ordinary skill in the art to provide any color including bright color in order to accommodate the likes of different people.

Response to Arguments

Applicant's arguments with respect to claims 21-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

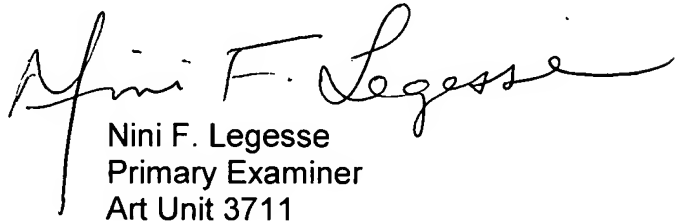
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (571) 272-4412. The examiner can normally be reached on 9 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Nini F. Legesse
Primary Examiner
Art Unit 3711

05/21/06